

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

KRISTOFER K.

Claimant,

v.

EASTERN LOS ANGELES REGIONAL  
CENTER,

Service Agency.

OAH Case No. 2011030808

**DECISION**

Administrative Law Judge Sophie C. Agopian, Office of Administrative Hearings, heard this matter on June 28, 2011, in Alhambra, California.

Claimant Kristofer K.<sup>1</sup> appeared and was represented by his parents. Fair Hearing Coordinator Judy Castañeda represented the Eastern Los Angeles Regional Center (Service Agency or ELARC).

Testimonial and documentary evidence was received during the hearing. The record was closed and the matter was submitted for decision at the conclusion of the hearing on June 28, 2011.

**ISSUE**

Whether Service Agency must fund claimant's dental work to replace two extracted teeth.

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<sup>1</sup>Claimant's surname is omitted to protect his privacy.

## FACTUAL FINDINGS

1. Claimant is a 25-year-old Service Agency consumer with a diagnosis of mild mental retardation (MMR). He has been a consumer since 1999, and currently lives with his parents.

2. When claimant was about 18 years old, he damaged his two front teeth in a bicycle accident. Because claimant was covered by his father's dental insurance at the time, the damaged teeth were restored by placing crowns on them. Claimant is no longer covered by private insurance.

3. Sometime in November 2010, the crowns fell out because claimant did not properly care for them. Claimant subsequently had the two teeth extracted by the University of Southern California's (USC) School of Dentistry, to which claimant was referred by his service coordinator because it provides dental services to developmentally disabled adults, among other individuals. Although claimant applied for Medi-Cal funding for his dental work, Medi-Cal did not agree to fund replacement of his teeth for reasons not established by the evidence. As of the date of the hearing, claimant's teeth were not replaced. The missing teeth are visible when claimant speaks or smiles and, therefore, negatively impact his appearance and sometimes his speech.

4. Claimant testified that the missing teeth have severely impacted his self-esteem and his desire to socialize with others, go out into the community, including school, and apply for a job. He feels "ashamed" and "embarrassed" and simply does not want to go out in public. Claimant once attended a church group function and was made fun of.

5. Although he wants to get a job, he understands that employers in the customer service industry will not want to hire him because of his missing teeth. Claimant's father testified that sometimes when claimant speaks, saliva comes out of his mouth. According to claimant's father, who has several years of experience as a restaurant manager, claimant would not be a viable candidate for a customer service position due to his appearance. Claimant testified sincerely that he very self-conscious about his teeth and feels as if others do not take him seriously because of his teeth. He feels as if others perceive him to be a "drug addict."

6. Claimant has a history of depression. He has received psychiatric care since about the age of 13. In October 2010, the month prior to losing his teeth, claimant and his live-in girlfriend broke up. The break-up exacerbated claimant's emotional status and caused him to become further depressed. Claimant's parents perceived the break-up to be "life threatening" to claimant due to claimant's past reactions to similar events, and therefore, notified claimant's service coordinator. On October 21 and 22, 2010, the service coordinator completed a "special incident report" documenting claimant's break-up with his girlfriend and claimant's severe emotional reaction to it. The report was placed in claimant's regional center file.

7. Claimant's parents continue to have concerns about claimant's mental status because claimant has attempted and threatened to commit suicide at least three times in his life. According to his parents, claimant was suicidal and found with a knife after his mother was deported from the country in 2008. In 2007, he was placed on suicide watch after he and another girlfriend had broken up. His most recent suicide threat was the one that occurred in October 2010, in connection with his most recent break-up. Claimant's parents are extremely concerned that if claimant is not able to "move on" past the break-up that claimant may become further depressed and again suicidal. After losing his teeth, claimant stays at home, rarely leaves his room, and appears to be in a "dangerous mental state."

8. Claimant testified that his depression has worsened since he lost his teeth. In speaking to his therapist about overcoming the break-up with his girlfriend, the therapist advised him that there "are other fish in the sea" and to "move on" past his break-up. Claimant, however, does not feel equipped to act on such advice because of his appearance and his diminished self-esteem.

9. On or about January 28, 2011, claimant's social worker, on claimant's behalf, made a written request to Service Agency to fund the dental work needed to replace the two missing teeth. The reason for the request was that claimant had "expressed concern that his missing front tooth is preventing his expressed goals of increased independence, self esteem and community integration." The social worker further opined that claimant's "developmental delays make problem solving and coping with [the issue of his missing teeth] more difficult than would be the case for a typically developing young man." She noted that since claimant has not been able to find funding for his dental work, he is becoming increasingly "distraught, isolative and hopeless."

10. On February 17, 2011, Service Agency notified claimant that it was denying his request for it to fund his dental work. The reason for the denial was that "the service does not appear to be medically or psychiatrically necessary nor can it be attributed to his diagnosis of mental retardation." Service Agency further stated that it had offered claimant "a list of low-income and/or sliding scale fee dental offices," but it was "turned down" because claimant already had a list of some providers from another source.

11. On February 21, 2011, claimant filed this appeal and requested a "fair hearing" stating that it is Service Agency's responsibility to "identify and pursue all possible sources of funding for consumers receiving regional center services."

12. Prior to denying claimant's request for funding and proceeding to an appeal hearing, Service Agency consulted with a medical doctor and a psychiatrist regarding claimant's need for the dental work. On February 10, 2011, physician consultant Dr. May Lau wrote the following in her report:

Kristofer's dental needs cannot be attributed to his diagnosis of mental retardation, therefore funding by the regional center is not recommended.

I do agree that fixing Kristofer's front tooth is important. According to Dec 2010 [sic] ILS report from GOALS, a list of low-cost dental clinics has been provided to Kristofer. Many low-cost dental clinics offer sliding scale fees and payment plans. It is not clear that these resources have been adequately explored with the support of Kristofer's ILS counselor. Getting Kristofer's front tooth repaired would be a good exercise for Kristofer to work with his ILS counselor in budgeting items and accessing community resources.

13. Dr. Lau's reference to only one tooth establishes that she was unaware that claimant was missing two teeth. According to her report, she did not visually examine complainant and only based her opinion upon a record review. Her omission of any reference to claimant's severe bouts of depression and/or his prior suicide attempts establishes that her record review was insufficient upon which to base an opinion. Dr. Lau's opinion, therefore, lacks persuasion.

14. Dr. Alexander Beebee, a Board Certified Psychiatrist, testified on behalf of the Service Agency regarding the basis for Service Agency's denial of claimant's funding request. On February 3, 2011, Dr. Beebee had reviewed claimant's records and wrote an opinion that the dental work was desirable and "humanitarian," but neither "medically" nor "psychiatrically" necessary. Dr. Beebee admitted that he was not a medical doctor, and therefore was not qualified to determine whether the dental work was medically necessary. However, he made the determination that the dental work was not "psychiatrically" necessary according to the records he reviewed.

15. Similar to the opinion of Dr. Lau, Dr. Beebee's opinion is not persuasive because the records he reviewed at the time he made his determination did not adequately describe claimant's fragile mental state in connection with losing his teeth. According to Dr. Beebee's report, the records he reviewed were claimant's IPP of February 17, 2010, which was prior to claimant losing his teeth, an ILS report dated December 2, 2010, which does not mention the issues with his teeth at all, and a psychological assessment conducted in 1999, which is described in further detail in Factual Findings 16 and 17 below. Because the records provided to Dr. Beebee for review did not provide a sufficient profile of claimant's mental status after losing his teeth, Dr. Beebee's determination is not reliable. Dr. Beebee also contended that he reviewed special incident reports and interdisciplinary notes regarding claimant's need for the dental work and claimant's mental status, but he was not familiar with claimant's history of depression, including his prior threats and/or attempts at suicide. If Dr. Beebee had spoken with claimant or his father at the time he conducted his review, he would have been made aware of such matters.

16. Dr. Beebee's knowledge of claimant derived largely from his review of the psychological report conducted in 1999 that diagnosed claimant with MMR. According to the report, at age 13, claimant did not appear to have "a diagnosable emotional condition" and was noted to have "no unusual [physical] characteristics." Dr. Beebee testified during the hearing that this was the type of information he relied upon in forming his opinion.

17. Although the 1999 psychological report did not diagnose claimant with an “emotional condition” it did identify claimant’s social-emotional issues in connection with his developmental disability. The report indicated that claimant lacked confidence in speaking and/or was self-conscious due to an expressive communication disorder. With respect to claimant’s expressive communication skills, the examiner noted that:

Significant delay is present in this area. He has a limited vocabulary range. He can employ phrases and short sentences but has difficulty fully expressing himself. No idiosyncratic speech was present of type seen in autism. Receptive verbal skills as measured by the Peabody Picture Vocabulary Test fell at a mental age of seven years. This correlated reasonably well with his intelligence and suggested that his language delay is primarily in the expressive domain. He also retains minor articulation problems.

Based on the findings, the examiner diagnosed claimant with Expressive Language Disorder on Axis I, and MMR on Axis II. As a result, claimant received speech therapy throughout high school to address his needs. But since graduating, he has not received any assistance with his speech. Although the report is more than ten years old, it establishes a basis for claimant’s social worker’s concern that claimant’s self-esteem is impacted by the way he presents himself to others, particularly in the way he speaks and asserts himself. Claimant’s front teeth, being visible to all when he opens his mouth to speak or smile, undoubtedly impacts his self-image. Claimant’s records indicate that, although he is mildly cognitively delayed, he is acutely aware of how others perceive him and has strong emotional reactions to it, such that he is at risk for placing his own life in danger. As such, there is a correlation between claimant’s desperate desire to have his teeth fixed and his disability. Dr. Beebee’s incomplete examination of claimant’s social-emotional history renders his opinion unreliable.

18. Claimant’s goals in his two most recent IPPs, dated February 17, 2010, and April 21, 2011, reflect his desire to live independently in his own apartment. He would like to be “as independent as possible,” “begin attending college,” “find[] a job in the community,” and “spend[] time with friends.” Based on claimant’s history, these goals are achievable as claimant has lived on his own before, in 2009 and part of 2010, in a studio apartment and has worked for a long period of time at a warehouse where he drove a forklift. Claimant has been able to achieve such goals with the support of independent living services (ILS) funded by Service Agency. According to ILS progress reports from 2009 and 2010, claimant was reported to be “very independent” and was “doing well living on his own.” “He appear[ed] happy and friendly.”

19. In December 2010, claimant had moved back into his parents’ home. Because claimant has not worked in some time, he has been receiving \$845 in Supplemental Security Income (SSI) each month. Claimant wants to use the money to help him move into an apartment again. According to Service Agency, the money could also be used to fund his needed dental work, but claimant contends that the money is barely covering his current cost

of living because he pays rent to his parents and contributes to household expenses. Such money is, therefore, allocated only for food, clothing and shelter.

20. Before losing his teeth, claimant enjoyed being social, “hanging out with friends,” listening to music and singing. In addition to getting a job, claimant was also interested in returning to school at Pasadena City College to study sound engineering. Now that claimant has lost his teeth, he no longer enjoys singing, does not want to return to school or work, and does not want to see his friends or even smile anymore.

21. Claimant’s testimony during the hearing was impressive and compelling. At age 25, he appears to have the maturity and insight equivalent to that of any other twenty-something-year-old. His primary concerns were his ability to socialize with friends, find another girlfriend, get a job and pursue a higher education. He testified convincingly that his only detriment at the present time was his appearance. He contended that his missing front teeth severely impact his self-image and his confidence. Although he understood the Service Agency’s opinion that counseling could help him cope with his poor self-image and how he deals with people in the community, he opines that having his teeth fixed would be an easier and more cost-effective solution. Claimant’s lay opinion is persuasive.

22. Claimant established that paying for his dental work would be a more cost-effective service or support to him in developing his independence than counseling or psychiatric therapy. According to claimant, replacing his teeth would cost about \$4,000 and would have an immediate, positive impact on his self-esteem and on his desire and ability to integrate into the community and gain economic independence. His contention is persuasive because Service Agency was unable to establish that the psychiatric therapy that claimant has received and/or will receive to address his self-image issues would benefit him to the extent that the dental work will. Furthermore, Service Agency could not establish how much therapy it would require for claimant to develop the skills necessary to overcome a severe self-image issue primarily affected by his teeth. Accordingly, without getting his teeth fixed, the therapy may be required indefinitely.

## LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)<sup>2</sup> The purpose of the Lanterman Act is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509 and 4685), and to enable them to approximate the pattern of everyday living of non-disabled persons of the same age and to lead more independent and productive lives in the community (§§ 4501 and 4750-4751.) Accordingly, persons with developmental disabilities have certain statutory rights, including the right to treatment and habilitation services and the right to services and

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<sup>2</sup>All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

supports based upon individual needs and preferences. (§§ 4502, 4512, 4620 and 4646-4648). Consumers also have the right to a “fair hearing” to determine the rights and obligations of the parties in the event of a dispute. (§§ 4700-4716.)

2. The determination of which services and supports are necessary for a consumer is made through the IPP process. The IPP must be developed through a process of individual needs determination, which may include the consumer, the consumer’s parents, a legal guardian or conservator, or authorized representative. The consumer and the family must have the opportunity to actively participate in the development of the plan. (§ 4646, subd. (b).) The IPP must include a statement of the consumer’s goals and objectives based on the consumer’s needs and preferences or, when appropriate, the needs and preferences of the consumer’s family. (§ 4646, subd. (a).) The development of the IPP must include consideration of a range of service options proposed by the IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, the cost-effectiveness of each option, and “generic services and supports when appropriate.” (§ 4512, subd. (b); § 4646.4, subd. (a).)

3. “Services and supports” may include “specialized medical and dental care.” (§4512, subd. (a).) “Specialized” services and supports means “special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives.” For the reasons stated in Factual Findings 3, 9, 21 and 22, the dental services provided by USC appear to be specialized services within the meaning of section 4512, subdivision (a), because USC, upon Service Agency’s referral, was the entity that extracted claimant’s teeth in the first place. Furthermore, Service Agency did not dispute that USC is a specialized provider of dental care for its consumers. Additionally, the dental services that claimant requires from USC are necessary for his social, personal, physical and economic habilitation and to help him achieve an independent, productive and “normal” life. Service Agency’s contention that it is only responsible for securing or providing services and supports that “alleviate” or are attributable to the identified “developmental disability” is misplaced and not supported by the language in section 4512, subdivision (a).)

4. Service Agency has denied claimant’s request for funding the dental work he needs to replace his two extracted teeth on the basis that, according to its consultants, the service is neither medically nor psychiatrically necessary and is not related to his disability. While it is true that claimant did not establish that the dental work is “medically” necessary; the evidence established that the dental work is psychiatrically necessary for claimant to continue to develop skills necessary for his independence. Claimant’s desire to isolate himself and remain at home is a direct result of claimant’s inability to cope with his physical appearance. (Factual Findings 4 – 9, 20 and 21.) According to claimant’s psychiatric history, his inability to cope with certain situations is extensive enough to become life-threatening. Claimant’s severe emotional reactions to life changes appear to be a function of his delayed development. Service Agency’s determination that the dental work is not

psychiatrically required for claimant is unreliable and not persuasive because it was based upon an incomplete review of claimant's records. (Factual Findings 12-17.)

5. Pursuant to Welfare and Institutions Code section 4659, subdivision (a), Service Agency is required to "identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following: (1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal...and federal supplemental security income and the statue supplementary program. (2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer." According to the evidence, Service Agency identified and pursued possible sources of funding for claimant's dental work, but was unable to identify and secure available funding for claimant's dental work. As set forth in Factual Finding 19, claimant's SSI is only adequate for food, shelter and clothing. Although claimant would like to get a job and pay for the dental work on his own, he has been unable to secure a job. (Factual Finding 5.) Private insurance is not available to claimant and Medi-Cal has refused to fund the replacement of his teeth. (Factual Findings 2 and 3.) As such, it appears that generic resources are simply unavailable for claimant.

6. According to Service Agency's Purchase of Service Guidelines, dated January 31, 2011, Service Agency will consider the purchase of specialized health services, including dental services, under "certain exceptional circumstances, as needed for assessment or treatment. Ordinarily, emergency room treatment, and routine health services are not included; however, exceptional circumstances may occur and will be reviewed on a case-by-case basis." Claimant established that exceptional circumstances exist by reason of Factual Findings 6 through 9 and 20 and 21.

7. For the reasons set forth in Factual Finding 22, replacing claimant's teeth is the most cost-effective means for Service Agency to assist claimant in overcoming his insecurities and poor self-image as a result of his missing teeth. Service Agency's suggestion that counseling may help claimant overcome such issues is not a cost-effective means of addressing claimant's need to become more independent.

8. For the reasons set forth in Legal Conclusions 1 through 7, cause exists to grant claimant's appeal.



## ORDER

Claimant Kristofer K's appeal is granted. Within 45 days after the date of this decision, Service Agency must fund claimant's dental work to replace his two extracted teeth or must secure (meaning obtain) such funding through other available resources in compliance with Welfare and Institutions Code section 4659.

DATED: October 4, 2011

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SOPHIE C. AGOPIAN  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE

**This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days.**